U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: EAC 99 116 52973 Office: Vermont Service Center Date: MAY 15 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER: [redacted]

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: Approval of the nonimmigrant visa petition was revoked by the director and is now before the Associate Commissioner for Examinations on appeal. The director's decision will be withdrawn and the matter remanded to him for further action and consideration.

The petitioner is a computer consulting firm which seeks to employ the beneficiary as a programmer/analyst for a period of three years. The director denied the petition upon receipt of derogatory information from the office of the U.S. Consulate General in Chennai, India. The anti-fraud officer found that the beneficiary had not been employed by a company named Informatics India from 1994 until May 1999 as stated in an employment letter.

On December 1, 1999 the director provided the petitioner with a letter outlining the reasons why he intended to revoke the approval of the petition.

The record shows that the petitioner submitted a new letter dated December 23, 1999 from the director of Informatics India confirming the beneficiary's period of employment with that firm. The letter was accompanied by two paystubs issued by Informatics India to the beneficiary for the months of October and November 1999.

On March 28, 2000, the director revoked the approval of the visa petition based on a finding that the second employment letter submitted was identical to the employment letter submitted with the initial petition. The director also found that the two paystubs were hard to read and computer generated and that they must therefore not be considered as objective evidence.

The second employment letter submitted by the petitioner to overcome the director's reasons for revocation was not identical to the employment letter submitted with the initial petition. The second letter states that the investigating officer abroad could not have spoken to the administrative officer of Informatics India because no position of administrative officer exists in their organization. Also, the letter includes the statement that the beneficiary was promoted to the position of senior software engineer at the firm on January 6, 1999. Finally, the two paystubs forwarded by the petitioner are readable and should not have been rejected without further investigation and verification.

In this case, the matter must be remanded to the director so that he may enter a new decision after taking into account and verifying the accuracy of the petitioner's timely response to the director's notice of intent to revoke the approval of the visa petition. The director shall either allow the approval to stand or enter a new decision revoking the approval of the petition.

ORDER: The director's denial decision is withdrawn. The case is remanded for appropriate action and decision consistent with the above discussion.